

CHARLES J. RYDZEWSKI

IBLA 81-18

Decided June 29, 1981

Appeal from decision of the Montana State Office, Bureau of Land Management, dismissing protest of rejection of simultaneous oil and gas lease applications (MTA-Sims-003).

Reversed and remanded.

1. Accounts: Payments -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing -- Regulations: Interpretation

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas lease applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. A regulation specifying a bank money order as an acceptable form of remittance requires the acceptance of a personal money order issued by a bank.

APPEARANCES: Charles J. Rydzewski, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Charles J. Rydzewski appeals the decision of the Montana State Office, Bureau of Land Management (BLM), dated September 12, 1980, dismissing his protest of BLM's rejection of his tendered remittance and drawing entry cards for the July 1980 simultaneous oil and gas drawing.

Appellant filed drawing entry cards for several parcels 1/ available in the July 1980 drawing, but his tendered filing fee was rejected by BLM because, as the BLM decision dismissing the protest states, his remittance, designated on its face as a personal money order, did not meet the requirements of 43 CFR 3112.2-2. 45 FR 35164 (May 23, 1980). The regulation states "The filing fee shall be paid in U.S. currency, Post Office or bank money order, bank cashier's check or bank certified check, made payable to the Bureau of Land Management."

Reference to copies of the rejected instruments in the case file discloses that they are both identified as a "Personal Money Order," and that they bear the name of Union Bank and Trust Company, N.A. (Union Bank), with an address of Grand Rapids, Michigan. The instruments further contain the inscription "Pay To The Order Of" followed

1/ The parcels to which this appeal applies are: 7 through 11, 14, 15, 17 through 19, 23, 32, 37, 38, 40 through 42, 44, 48 through 50, 89, 91, 94, and 104 through 111.

by a blank line to be filled in with the name of the payee; the specification of a certain amount of money to be paid, together with the name of the bank, which has been imprinted by machine; and blank lines for the date, signature, and address of the drawer. The instruments have been signed by appellant, Charles J. Rydzewski, as drawer, and the blanks for the name of the payee, the date, and the address of the drawer have been completed in the handwriting of appellant. The instruments have not been signed by an official of the bank; but the bank's name appears in the lower left hand corner, and the bank's serial number for the money order appears in the upper right hand corner.

In his statement of reasons for appeal, appellant asserts that the personal money orders he tendered are "responsible, acceptable, [and] negotiable across the nation." Appellant states that "[a]ll banks in the Midwest States area issue the same kind of money orders, [and] there is no other type of bank money order [available]."

A letter from the Vice President and Assistant Cashier of Union Bank, James E. McGookey, submitted in support of the appeal, states:

Gentlemen:

Our customer, Charles R. Rydzewski, has asked us to write this letter regarding his appeal under the above docket number.

We wish to verify to you that the personal money orders which Mr. Rydzewski purchased from us and submitted to you are valid instruments issued by our bank and which would be honored upon proper presentation. We consider the personal money orders to represent bank funds and as such we classify them as official checks similar to cashier's checks and certified checks. We do not issue an instrument with the designation bank money order but instead use the personal money order.

We hope that this will help to clarify the nature of the instrument which Mr. Rydzewski submitted to you.

The pertinent regulations governing the simultaneous oil and gas filing procedures provide that only certain forms of remittance are acceptable in payment of the filing fees, including "bank money order, bank cashier's check or bank certified check." 45 FR 35164 (May 23, 1980) (to be codified in 43 CFR 3112.2-2(a)). Further, the regulations provide that applications filed shall be examined prior to selection and that any application which is "[a]ccompanied by an unacceptable remittance" shall be returned to the applicant together with the filing fee. 45 FR 35165 (May 23, 1980) (to be codified in 43 CFR 3112.5(a)). Therefore, the issue raised by this appeal is whether a simultaneously filed oil and gas lease application accompanied by a filing fee in the form of a personal money order issued by a bank is properly rejected pursuant to a regulation providing that a bank money order is an acceptable form of remittance.

[1] A bank money order has been defined as "an instrument issued by an authorized officer of a bank and directed to another, evidencing

the fact that the payee may demand and receive upon indorsement and presentation to the bank the amount stated on the face of the instrument; such an instrument is paid from the bank's funds and liability for payment rests solely on the issuing bank." 2 Anderson, Uniform Commercial Code, § 3-104:20 (2d ed. 1971). A personal money order issued by a bank for a consideration accepted as adequate by the bank is a purchase of the credit of the bank and constitutes a means of establishing or transmitting that credit so that once issued to the purchaser it is no longer revocable by the bank. 10 Am. Jur. 2d, Banks § 545 (Supp. 1980). Thus, it would appear that the payee of a money order issued by a bank may be assured that funds to cover the instrument have been transferred to the bank. The money orders submitted by appellant are consistent with this definition of a bank money order.

However, a bank money order that does not require the signature of the issuer has been held subject to a stop payment order. 10 Am. Jur. 2d, Banks § 643 (Supp. 1980). An instrument denominated a "Personal Money Order" which at the time of purchase by the bank's customer had an amount of money written on it, and on the face of which the bank's name and address were printed, but which was blank as to date, payee, and name and address of drawer, these items being subsequently completed by purchaser, falls within the "check or other draft" provisions of section 3-409 of the Uniform Commercial Code (UCC) on which drawee is not liable until acceptance of the instrument and, accordingly, is

subject to a stop payment order prior to such acceptance. Krom v. Chemical Bank New York Trust Co., 38 App. Div. 2d 871, 329 N.Y.S.2d 91 (1972). This Board has recognized that a personal money order issued by a bank is similar to a personal check to the extent that payment may be stopped any time prior to acceptance by the drawee bank. Ross L. Kinnaman, 48 IBLA 239 (1980).

Thus, a bank personal money order may be distinguished from a customary bank money order signed by an authorized bank official, which, like a cashier's check, entails an instrument drawn on a bank, issued by the drawee bank, and signed by an authorized bank employee, so that it cannot ordinarily be countermanded. See Frank H. Gower, Jr., 53 IBLA 146 (1981); Oxy Petroleum, Inc., 52 IBLA 239 (1981). Subsequent to issuance of the regulation identifying "bank money orders" as an acceptable form of remittance, BLM attempted by internal memorandum to make this distinction in specifying what type of bank money order is acceptable. Instruction Memorandum No. 80-635, change 2, dated November 3, 1980, asserts that the characteristics of bank money orders are similar to cashier's checks in that they are: drawn on a bank, issued by the drawee bank, and signed by an authorized bank employee. The instruction memorandum further states that personal money orders, even if issued by a bank, are not acceptable. Unfortunately, the governing regulation was not amended to reflect this clarification.

A regulation should be sufficiently clear that there is no reasonable basis for an oil and gas applicant's noncompliance with the regulation before it is interpreted to deprive an applicant of a preference right to a lease. Bill J. Maddox, 34 IBLA 278 (1978); A. M. Shaffer, 73 I.D. 293 (1966). The regulation simply does not specify what types of money order issued by banks are acceptable. Therefore, personal money orders issued by a bank should be accepted and rejection of appellant's remittance and drawing entry cards was improper.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case is remanded.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

